

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

WP(C).No. 20513 of 2007(P)

PETITIONER:

M/S. DYNA ENTERPRISES, B-101,
NAGARJUNA APARTMENTS,
MAYUR KUNJ, DELHI-110 096,
REPRESENTED BY ITS PROPRIETOR.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENTS:

1. COMMISSIONER OF CUSTOMS,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
CUSTOM HOUSE, COCHIN.
2. CUSTOMS EXCISE SERVICE TAX APPELLATE
TRIBUNAL, (SOUTH ZONAL BRANCH),
BANGALORE.

BY ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 06/07/2007, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

W.P.(C) No.20513 of 2007 P

Dated this the 6th day of July, 2007.

JUDGMENT

The petitioner imported altogether 13 consignments of CFL lamps in November, 2002. The goods were cleared after paying the usual customs duty payable for them. In relation to the said imported goods, there was a notification dated 21.12.2001 imposing provisional Anti Dumping Duty. It remained in force for six months. Though its validity could have been extended for a further period of 3 months, there was no such extension. Later, the final notification was issued on 10.12.2002 which takes effect from the date of the original notification imposing the provisional duty. The goods were imported during the interregnum, when there was no notification. The petitioner was called upon to pay the differential duty. Initial demand was about Rs.60 lakhs, which was later modified to about Rs.29 crores. The objections of the petitioner were heard and the Assessing Authority passed final orders calling upon the petitioner to pay Anti Dumping duty of Rs.29,38,75,442/-. The petitioner appealed, without success. Against the first appellate order, the petitioner preferred Ext.P2 appeal before the Customs Excise Service Tax Appellate Tribunal, Bangalore Bench and he also filed a petition for waiver of the condition of pre-deposit.

The said application was considered and rejected by Ext.P4 order. The tribunal found that the petitioner has not made out a good prima facie case and it is therefore liable to pay the entire amount. This writ petition is filed challenging Ext.P4 on various grounds.

2. The main contention of the petitioner is that the notification issued imposing Anti Dumping Duty cannot have any retrospective operation during the interregnum when the provisional notification was not in force. Other contentions are also raised.

3. There were about 6 decisions of the very same tribunal in favour of the petitioner. There were two decisions of the Principal Bench against it. Relying on those two decisions, the tribunal rendered the impugned decision. Several other contentions raised by the petitioner were not dealt with. Hence the challenge against Ext.P4..

4. Learned Senior Counsel Sri.Joseph Vellappilli appearing for the writ petitioner contended that the writ petitioner has got a very strong prima facie case, in view of the several decisions of the very same tribunal in favour of the petitioner. It is also pointed out that the two decisions of the Anti-Dumping Bench do not lay down the correct legal position. It is contended

that when two views are possible regarding the liability to pay tax, the decision which is in favour of the assessee should be accepted. By interpreting a statutory provision, additional liability cannot be burdened on the petitioner. The tribunal found that there is no case for the petitioner that it is financially weak. But it is pointed out that the same is contrary to the specific ground raised in the appeal memorandum. If the waiver of pre-deposit is not allowed, it is not possible to pursue the appeal owing to the financial position of the petitioner and the appellate remedy will become illusory.

5. I heard learned Assistant Solicitor General, who supported the impugned order. According to him, most of the grounds raised before this court are not seen raised before the tribunal. In any view of the matter, it is submitted that the petitioner should be directed to deposit, at least, a substantial portion of the duty demanded.

6. Ext.P4 is an interim order. This court can interfere with the same only on very limited grounds. But, I feel that the finding of the tribunal, that the petitioner has no strong prima facie case, is not fully tenable. When six decisions of the very same tribunal is in favour of the petitioner, it must be presumed that the petitioner has got a very strong arguable case. But, the

view taken by the tribunal following the two decisions of the Anti-Dumping Bench is certainly a plausible view. So, this is not a case where the petitioner has got a cast-iron case.

7. So, I feel that the condition for pre-deposit can be waived on the petitioner furnishing sufficient security. Going by the financial position pleaded by the petitioner, it is all the more necessary that the petitioner should give proper security so that the State can get money, in the event of dismissal of the appeal.

8. Accordingly, in lieu of the direction given in Ext.P4, it is ordered that the appeal shall be heard and disposed of without insisting for pre-deposit, provided, the petitioner furnishes bank guarantee to the first respondent for the amount due, within one month from today.

Writ petition is disposed of as above.

Sd/-

(K.BALAKRISHNAN NAIR)
JUDGE

sk/

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P.S. To Judge